

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 4:92CR00090-06 JLH

MICHAEL RODGERS

DEFENDANT

ORDER

Pending is Defendant's Motion to Modify Sentence Under 18 U.S.C. § 3582, based on the retroactive application of the United States Sentencing Commission's crack cocaine penalty guideline reduction (Amendment 750).

At his original sentencing, Defendant's base offense level was 36, with a criminal history category of II. He received a 4-point increase for being a leader/organizer and a 2-point increase for obstruction of justice, which resulted in a total offense level of 42 and a guideline range of 360 months to life. Defendant received a 420 months sentence (360 months plus a consecutive 60 months).¹ Amendment 706 of the U.S. Sentencing Guidelines reduced Defendant's base offense level to 34, making his new guideline range 324-405 months. On July 28, 2008, Defendant's sentence was reduced to 384 months.²

Defendant was responsible for 7,997.4 grams of cocaine and 426.02 grams of crack. When there is more than one controlled substance involved, the drugs must be converted to a marijuana equivalent so that a single offense level can be established.³ Under the newest guidelines, which

¹ Doc. No. 200.

² Doc. No. 314. His sentence was reduced to 324 months plus the consecutive 60 months, for a total of 384 months.

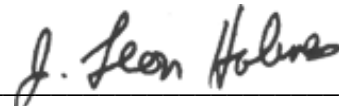
³ U.S.S.G. § 2D1.1, Application Note 10(B).

include Amendment 750, the cocaine is converted to 1,599.48 kilograms of marijuana equivalent⁴ and the crack equals 1,521.3174 kilograms of marijuana equivalent,⁵ for a total of 3,120.7974 kilograms of marijuana equivalent. 3,120.7974 kilograms of marijuana equivalent establishes a base offense level of 34. Accordingly, Defendant's base offense level remains 34 and his guideline range is unchanged at 324-405 months.

Section 1B1.10(a)(2) of the Guidelines reads: "A reduction in the defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if . . . an amendment listed in subsection (c) does not have the effect of lowering the defendant's applicable guideline range."⁶ Since neither Defendant's base offense level nor guideline range changed as a result of Amendment 750, Defendant is not entitled to a sentence reduction under the new retroactive amendment.

Accordingly, Defendant's Motion to Modify Sentence Under 18 U.S.C. § 3582 (Doc. No. 338) is DENIED.

IT IS SO ORDERED this 13th day of December, 2011.


UNITED STATES DISTRICT JUDGE

⁴ 1 gram of cocaine = 200 grams of marijuana equivalent. 7,997.4 grams x 200 = 1,599,480 grams or 1,599.48 kilograms of marijuana equivalent.

⁵ 1 gram of crack = 3,571 grams of marijuana equivalent. 426.02 grams x 3,571 = 1,521,317.42 grams or 1,521.3174 kilograms of marijuana equivalent.

⁶ U.S. SENTENCING GUIDELINES MANUAL § 1B1.10(a)(2)(B) (2011).